



United States Senate

WASHINGTON, DC 20510-0905

November 24, 2009

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

In light of the scientific findings released yesterday by the Consumer Product Safety Commission (CPSC) regarding the corrosive effects of Chinese drywall, the undersigned strongly urge you to issue formal guidance by the end of the year that clarifies a taxpayer's right to claim a casualty loss deduction for drywall-related losses.

As noted in the attached letter from Ms. Cheryl Falvey, the General Counsel of the CPSC, a study of the indoor air in 51 homes found a strong association between Chinese drywall, the hydrogen sulfide levels in homes with that drywall, and corrosion in those homes. The study was conducted by Environmental Health & Engineering, Inc., under a federal contract extended by CPSC. The study's findings were further supported by initial studies of corrosion of electrical and fire safety components conducted by Sandia National Laboratories and the National Institute of Standards and Technology, respectively.

The indoor air study also found that levels of hydrogen sulfide and formaldehyde in homes with Chinese drywall, in combination with other compounds, may cause health consequences such as upper airway, skin, and eye irritation.

As you know, some of the undersigned earlier this year asked that the IRS provide clarity as to whether taxpayer losses related to Chinese drywall qualified for a casualty loss deduction under section 165. The IRS response on July 2, 2009 referenced the EPA and CPSC investigations into the reported problems with Chinese drywall and concluded that if it is determined the drywall emits an unusual or severe concentration of chemical fumes that causes extreme and unusual damage, affected taxpayers should qualify for the casualty loss deduction. We believe the CPSC's findings, along with the guidance from Ms. Falvey, provide the scientific evidence and satisfy the legal criteria necessary to meet this requirement.

Thus, given the widespread nature of the problem and the numerous and disparate taxpayers impacted, we request that the IRS provide formal guidance – in the form of a Notice or Revenue Procedure – making affected taxpayers aware of the federal income

tax treatment of the various expenses they have incurred with respect to Chinese drywall. The guidance should be issued as soon as possible, preferably before the end of the year, so that taxpayers have the information they need when filing their 2009 income tax returns.

Thank you for your assistance and attention to this matter.

Sincerely,

<u>Bill Nelson</u>	<u>Mark R. Wines</u>
<u>Deag L. King</u>	<u>D. J. V. H.</u>
<u>J. Webb</u>	<u>John M.</u>



U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

OFFICE OF THE GENERAL COUNSEL

Cheryl A. Falvey
General Counsel
Tel: 301-504-7642
E-Mail: cfalvey@cpsc.gov

November 23, 2009

The Honorable Bill Nelson
716 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Mark R. Warner
459A Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Jim Webb
144 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Glenn C. Nye III
116 Cannon House Office Building
United States House of Representatives
Washington, DC 20515

Dear Senators Nelson, Warner and Webb and Representative Nye:

I am in receipt of the July 2, 2009 letter from the U.S. Department of Treasury, Internal Revenue Service (IRS), regarding Chinese drywall and the casualty loss deduction available to taxpayers under section 165 of the Internal Revenue Code. As you know, the Consumer Product Safety Commission (CPSC), in coordination with other federal and state partners, has undertaken a broad scientific investigation into the reported health and corrosion issues related to drywall. While CPSC cannot speak to the determinations necessary under the Internal Revenue Code for a taxpayer to qualify for such a deduction, because the information developed in the investigation relates to the presentation of any claim for the deduction, we are forwarding to you the results of our findings to date.¹ This letter discusses those studies and other field work conducted by our staff in light of the July 2, 2009 IRS letter.

Following up on many of the over 2000 consumer complaints our agency has received, CPSC staff has visited homes and interviewed hundreds of homeowners reporting problem drywall. Although the circumstances of each homeowner may be different, our investigation has confirmed many of the same experiences that your constituents have

¹ All information released by the CPSC and its partners regarding drywall is available to the public at drywallresponse.gov.

described and that were detailed in the July 2, 2009 IRS letter. Homeowners have reported to the CPSC that the drywall has caused bad odor, corrosion and sickness and driven some from their homes. The complaints of health effects have included headaches, itchy eyes, scratchy, burning throat, nose bleeds, sinus infections, breathing problems, and skin irritations. These symptoms have been reported to go away after the homeowner leaves the house. During home visits, CPSC investigators similarly experienced irritation of the eyes and scratchy throat.

With respect to corrosion, reports to the CPSC have included complaints of corrosion on air conditioning evaporator coils that leads to pitting of the tube and leaking of freon. Some relatively new air conditioning systems have been reported to require numerous service calls, including multiple coil replacements over a two year period. Some homeowners have reported that their smoke alarms went off in the middle of the night without an apparent cause. CPSC has also been told that new televisions, microwave ovens, refrigerators, dishwashers and computers have suddenly stopped working, again for no apparent reason.

In investigating homes, CPSC staff has harvested samples of corroded air conditioner evaporator coils, electrical wiring and other affected household components, and those samples have been sent to two national laboratories for further evaluation. In addition, CPSC investigators have found corrosion-type pitting on kitchen and bathroom fixtures. Our investigators have observed blackening of the metals on chandeliers, picture frames, jewelry, silverware, wall hangings and other metal furnishings in the home. In some instances, there was also a black residue that had settled on items in the home, and which was observable on counter tops and wood surfaces.

Our scientific studies taken together suggest a strong association between the problem drywall, the hydrogen sulfide levels in homes with that drywall, and corrosion in those homes. The study of fifty-one homes released today detected hydrogen sulfide and formaldehyde in homes containing the problem drywall, but at concentrations below irritant levels. However, the authors of the study have indicated that it is possible that the additive or synergistic effects of the hydrogen sulfide, formaldehyde and other compounds in the subject homes could cause irritant effects.


Two preliminary studies of corrosion of metal components taken from homes containing the problem drywall found copper sulfide corrosion in the several samples tested. The reports indicated that the copper sulfide found on the samples was consistent with copper exposure to reduced sulfur compounds. This further supports the finding in the fifty-one home study.

We hope this information will be helpful to taxpayers evaluating a casualty loss deduction in connection with problems experienced in homes with affected drywall. The CPSC will continue to work with its federal and state partners on the scientific investigation to determine the nexus between the problem drywall and health and safety issues. The CPSC and our federal partners have also established an Identification and Remediation Protocol Team of scientists and engineers that will seek use the results of

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the EH&E study and other information to design a cost-effective screening protocol to identify homes with this problem. This information may also prove relevant to the casualty loss determination and will be forwarded both to you and the IRS as soon as it is available.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Falvey". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Cheryl A. Falvey

Enclosures:

- (1) Environmental Health & Engineering, Inc. 51-Home Indoor Air Study
- (2) CPSC/SNL Electrical Component Analysis
- (3) CPSC/NIST HVAC, Gas and Fire Safety Analysis

cc: George G. Blaine, Associate Chief Counsel, IRS
Floyd Williams, Director, Legislative Affairs, IRS